

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11

WSI MANUFACTURING, INC.

BKY 03-46641-RJK

Debtor.

U.S. TRUSTEE'S OBJECTIONS TO PROPOSED
DISCLOSURE STATEMENT OF DEBTOR

The United States Trustee, by his undersigned attorney, does hereby object to the adequacy of information in the Proposed Disclosure Statement and Plan, both dated July 30, 2004, filed by the Debtor in Possession in the above entitled case. In furtherance of his objections, the U.S. Trustee states as follows:

1. This matter is set for hearing at 1:30 p.m. on September 1, 2004, before the Honorable Robert J. Kressel, United States Bankruptcy Judge, Courtroom #8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

2. The proposed disclosure statement and plan do not contain adequate information because they are unclear in the proposed treatment of the Class 3-B claims of the Patent Plaintiffs in the following respects.

A. First, the proposed treatment of Class 3-B members is for quarterly payments as set forth in a “payment schedule” which goes through December 31, 2009. It is not clear if the quarterly payments are \$4,000 each or if the total payments over four quarters will equal \$4,000.00. (\$1,000.00 per quarter). The exact amount of each payment should be clearly set forth.

B. Second, in Class 3-B the amount of quarterly payments to be made under the “payment schedule” is confusing because it seems to indicate there will be a payment of \$4,000 on 12/31/05 and another payment on 1/1/06 of \$4,500.00, which is the next day. This overlap happens at each year end. The plan and proposed disclosure statement should be amended to make this less confusing.

C. Finally, the proposed disclosure statement and plan provide that the Patent Plaintiffs will receive future royalties from the debtor’s sale of allegedly infringing products and that those royalties will be credited against the payments due to that creditor under the plan. The disclosure statement should state whether the Patent Plaintiffs have agreed to the debtor’s post confirmation use of its patented technology under these terms. If there is no such agreement, the disclosure statement should explain how this will impact the debtor’s future sales.

3. In the treatment of the Class 3-C General Unsecured Claims, the proposed Disclosure Statement and Plan have the same problems with the “payment schedule” as in Class 3-B, as set forth in paragraphs 2(A) and 2(B) above. The total amount of aggregate quarterly payment should be made clear and the year end payment dates, in years where there is a payment increase, should be made less confusing.

4. The plan and proposed disclosure statement should contain an estimate of the amount of unclassified administrative expenses to be paid on the effective date. This should include professional fees and other administrative expenses. Also, the payment of those expenses should be clearly shown on Exhibit A, the future Financial Projections.

5. The Liquidation Analysis attached to the proposed disclosure statement as Exhibit B requires more information.

A. First, in the list of asset to be liquidated there should be a line item for avoidance causes of action, since the disclosure statement seems to indicate that such claims exist.

B. Second, there should be an explanation of the line entry “Post petition payable” which is listed as \$61,182.00. If this is the total amount of administrative to be paid on the Effective Date, that number should be included in the body of the proposed disclosure statement. Also, it should be shown on the Financial Projections that the debtor will have sufficient funds to make that payment when it comes due.

C. Finally, the liquidation analysis contains the line item “Prepetition unsecured balance” of \$(1,070,606). That figure of \$1,070,606 appears to substantially exceed the stated amount of claims in all unsecured classes in the disclosure statement and plan. If this figure includes the still non-final judgment obtained by the patent plaintiffs, that fact should be stated.

6. The proposed disclosure statement should contain information regarding the identity of individuals and nature of compensation to be paid to those individuals after confirmation of the plan. See 11 U.S.C. §1129(a)(5)(A).

7. The proposed disclosure statement (page 9) and plan (page 7), in the treatment of executory contracts, provide that Exhibit A (which is the list of rejected contracts) may be modified by the debtor

“until the Court’s order confirming the Plan becomes a Final Order”. Such a provision may be overreaching by the debtor since the debtor would have the ten day window after confirmation until the confirmation order becomes final in which to change an assumed executory contract to a rejected one, thereby depriving a party to such a contract of an opportunity to be heard. The debtor should be required to decide which executory contracts it will assume or reject by the time confirmation is heard by the court.

WHEREFORE, the United States Trustee hereby objects to the adequacy of information in the debtor’s proposed disclosure statement and plan and submits that the proposed disclosure statement should not be approved unless the foregoing deficiencies are resolved.

HABBO G. FOKKENA
United States Trustee
Region 12

Dated: August 20, 2004

By: e/Michael R. Fadlovich
Michael R. Fadlovich
Attorney/Advisor #158410
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
612/ 664-5500

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MEMORANDUM OF LAW IN SUPPORT OF
OBJECTIONS TO PROPOSED DISCLOSURE STATEMENT

The primary purpose of a disclosure statement is to give creditors information necessary to decide whether to accept the plan. In re Monnier Bros., 755 F.2d 1336, 1342 (8th Cir. 1985).

A disclosure statement must provide "adequate information" as defined in 11 U.S.C. 1125(a):

Precisely what constitutes adequate information in any particular instance will develop on a case by case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case In reorganization cases, there is frequently great uncertainty. Therefore the need for flexibility is greatest.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 409, reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 6365. See also, 11 U.S.C. §1125(b) and In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir.), cert denied, 109 S.Ct. 311 (1988).

A nonexclusive list of the types of information that should be included in a disclosure statement can be found in In re Dakota Rail, Inc., 104 B.R. 138, 142-143 (Bkrtcy.D.Minn. 1989). See also, In re Haukos Farms, Inc., 68 B.R. 428 (Bkrtcy.D.Minn. 1986) and In re Metrocraft Pub. Services, Inc., 39 B.R. 567 (Bkrtcy.N.D.Ga.

HABBO G. FOKKENA
United States Trustee
Region 12

Dated: August 20, 2004

By: e/Michael R. Fadlovich
Michael R. Fadlovich
Attorney/Advisor #158410
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
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ORDER

Debtor.

At Minneapolis, Minnesota, this ____ day of _____, 2004.

This matter came before the Court for hearing on the hearing on adequacy of the July 30, 2004, Proposed Disclosure Statement filed by the Debtor in the above entitled case. Michael R. Fadlovich appeared on behalf of the United States Trustee. Other appearances were noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure 7052.

IT IS HEREBY ORDERED:

That approval of the Proposed Disclosure Statement is denied.

ROBERT J. KRESSEL
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

In re:

BKY 03-46641-RJK

Chapter 11

WSI MANUFACTURING, INC.

CERTIFICATE OF SERVICE

Debtor.

The undersigned hereby certifies under penalty of perjury that he is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers. That on August 20, 2004, he served a copy of the attached: United States Trustee's Objections to Proposed Disclosure Statement and Plan by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Clint Cutler, Esq.
Fredrikson & Byron
4000 Pillsbury Center
200 South Sixth Street
Minneapolis, MN 55402

WSI Manufacturing, Inc.
Joel Wiens
2767 Highway 55
Eagan, MN 55121

William Hoch, Esq.
Crowe & Dunlevy
20 North Broadway
1800 Mid-America Tower
Oklahoma City, OK 73102

Ray Wallander, Esq.
Rider Bennett
2000 Accenture Tower
333 South Seventh Street
Minneapolis, MN 55402

IRS Office of Chief Counsel
650 Galtier Plaza
380 Jackson Street
St. Paul, MN 55101

Minn. Dept of Revenue
Bankruptcy Section
P.O. Box 64447
Bankruptcy Section
St. Paul, MN 55164-0447

IRS District Director
P.O. Box 64450
Stop 5700
St. Paul, MN 55164

Stephen M. Mertz, Esq.
Faegre & Benson
2200 Wells Fargo Tower
90 South Seventh Street
Minneapolis, MN 55402-3901

By: e/Michael R. Fadlovich
Michael R. Fadlovich
Trial Attorney
MN Atty I.D. No. 158410
U.S. Trustee's Office
300 South Fourth St., #1015
Minneapolis, MN 55415
(612) 664-5500